

30-3-40. Custody and parent-time when one parent is a service member.

(1) As used in this section:

(a) "Deployment" means the temporary transfer of a service member serving in an active duty status to another location in support of combat or some other military operation.

(b) "Mobilization" means the call up of a National Guard or Reserve service member to extended active duty status, but does not include National Guard or Reserve annual training.

(c) "Service member" means a person who is:

(i) a member of the Utah National Guard;

(ii) a member of a Reserve component based in the state; or

(iii) a member of the Armed Forces of the United States on active duty and stationed in this state.

(d) "Temporary duty" means the transfer of a service member from a military base to a different location, often another base, for a set period of time to accomplish training or to assist in the performance of a noncombat mission.

(2) In the absence of a parenting plan or other agreement between the parties covering such situations:

(a) A service member who is a custodial parent of minor children in this state, and who is deployed, mobilized, or ordered to temporary duty at another location shall, if possible, contact the noncustodial parent as soon as practicable after receiving orders. The service member shall inform the noncustodial parent of the approximate dates the service member will be away, if known.

(i) Unless the noncustodial parent has supervised or limited parent-time, if willing and able, the noncustodial parent may provide care for any minor children during the time the service member is away. The noncustodial parent shall notify the custodial parent of the noncustodial parent's willingness to provide care as soon as practicable, but not less than five days before the service member is required to leave. If the noncustodial parent will provide care while the service member is away, the parents shall arrange a time and place for the delivery of the children to the noncustodial parent.

(ii) If the noncustodial parent is unwilling or unable to provide care for any minor children during the time the service member is away, the service member may make specific arrangements for the housing and care of the minor children during the time the service member will be away. Notice of arrangements made by the service member shall be provided to the noncustodial parent and may not deprive the noncustodial parent of parent-time during the same time period.

(b) If a service member who is a noncustodial parent is deployed, mobilized, or ordered to temporary duty at another location, his or her parent-time rights may be exercised by a family member with a close and substantial relationship to the minor child for the duration of the service member's absence. The service member shall provide the custodial parent with written notice of arrangements made regarding the exercise of parent-time in the service member's absence.

(3) A temporary exchange of physical custody under this section may not alter the original custody order of the court.

(4) In addition to the arrangements made for the care of minor children under

this section, both parents shall comply with the provisions of Section 78B-12-108.

(5) A service member who is deployed, mobilized, or ordered to temporary duty may not be deprived of custodial or parent-time rights while unavailable pursuant to military orders. Any petition, motion, or action brought by a parent or guardian before a court attempting to deprive or alter custody or parent-time rights shall be stayed in accordance with Section 39-7-105 and the Federal Servicemembers Civil Relief Act, 50 U.S.C. Appx. 521.

Amended by Chapter 218, 2010 General Session